

In re) Fair Hearing No. 16,524
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Appeal of)

The petitioner appeals a decision of the Department of PATH terminating her VHAP coverage because she is a college student. The issue is whether the VHAP regulations allow coverage for individuals in her situation.

1. The pertinent facts are not in dispute. The petitioner is twenty-one years old and attends college full-time. She expects to graduate in 2002.

2. In September 1999 the petitioner was granted VHAP benefits. The Department maintains that this was an error. The petitioner continued to receive VHAP through June 2000, when she was notified that her eligibility would end due to her status as a college student.¹

3. The petitioner admits that she is able to obtain coverage under a health plan offered to students by her college. However, the college's plan only covers physician and hospital services. The coverage does not include many kinds of services, such as eyeglasses, dental, and family planning, all of which the petitioner needs.

4. Most important to the petitioner, however, is the

¹ The petitioner has received continuing benefits pending

fact that her college's plan does not cover ongoing mental health counseling. The petitioner suffered a traumatic childhood and adolescence and has been in counseling for the past six years with a provider with whom she has established a trusting and effective relationship. The petitioner maintains that continuing access to this counseling is crucial if she is to maintain her ability to stay in school and achieve a successful and productive adulthood.

5. The petitioner's college does have an in-house counseling service that is available to students, but the petitioner maintains she has tried this and found it wholly inadequate to meet her needs in this area.

ORDER

The decision of the Department that the petitioner is ineligible for VHAP medical benefits is affirmed.

REASONS

Section 4001.2 of the VHAP regulations provides as follows:

An individual meets this requirement if he/she does not qualify for Medicare, does not have other insurance that includes both hospital and physician services, and did not have such insurance within the 12 months prior to the month of application. The requirement is waived

this fair hearing.

if access to employer-sponsored insurance is lost during this period because of:

- (a) loss of employment, or
- (b) death or divorce, or
- (c) loss of eligibility for coverage as a dependent under a policy held by the individual's parent(s).

In addition, students under the age of 23 enrolled in a program of an institution of higher education are not eligible for coverage if they have elected not to purchase health insurance covering both hospital and physician services offered by their educational institution or if they are eligible for coverage through the policy held by their parent(s), but their parents have elected not to purchase this coverage.

The petitioner agrees that she has access to health insurance offered by her college and that this health insurance covers hospital and physician services. She argues, however, that because of her particular need for particular psychotherapy services, which aren't covered under her college's plan, she should be found eligible for VHAP so she can continue to receive those services.

The petitioner has certainly made a compelling policy argument for VHAP coverage. Unfortunately, however, the regulations as written (supra) clearly preclude coverage for individuals in her circumstances. The regulations make no reference at all to the cost or scope of other insurance as long as that insurance covers hospital and physician services.

Under its statute and rules the Board is bound by law to affirm decisions of the Department if they are in accord

with the pertinent regulations. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17. Therefore, despite the policy merits of the petitioner's situation, the Board is constrained to uphold the Department's decision in this matter finding the petitioner ineligible for VHAP.²

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² At the hearing in this matter, held on September 6, 2000, the petitioner was advised to apply to the Division of Vocational Rehabilitation for assistance in maintaining her access to counseling; and she was advised that she has a separate right to appeal if she is denied services by that agency. The petitioner should also be aware that if she is ever without sufficient income and resources to continue with her present counseling, and she can establish that the continuation of that counseling would constitute an "emergency medical need", she can apply to the Department for General Assistance (GA) on an as-needed basis; and if she is denied she can request a fair hearing to determine her eligibility under that program.